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January 28,2003

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Federal Communications Commission
Office of Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **CC Docket No. 96-45**
Ex Parte Letter

Dear Ms. Dortch,

Our firm has been requested by our colleagues at Comingdeer, Lee & Gooch to transmit for filing with the Commission the attached ex parte letter on behalf of Bixby Telephone Company. The letter addresses matters pertaining to the Commission's Report and Order and Second Further Notice of Proposed Rulemaking in the Commission's Universal Service proceeding (CC Docket No. 96-45).[1]

Please contact the undersigned if there are any questions regarding this matter.

Sincerely,

John Kuykendall

cc: Chairman Michael Powell
Commissioner Kathleen Abernathy
Commissioner Michael J. Copps
Commissioner Kevin Martin
Commissioner Jonathan S. Adelstein

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List A B C D E

Attachment

[1] *See In the Matter of Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Acto of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format: Report and Order and Second Further Notice of Proposed Rulemaking,* CC Docket *Nos.* 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170; FCC 02-329 (rel. Dec. 13, 2002).

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Federal Communications Commission
Office of Secretary

January 15,2003

Michael Powell, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Comments on Connections Based USF Contribution Methodology

Dear Chairman Powell:

In regards to the Federal Communication Commission's (FCC's) adopting Interim Measures to Maintain Universal Service Fund on December 12,2002 by Report and Order and Second Further Notice of Proposed Rulemaking (FCC 02-329), we wish to submit the following comments.

USF historically funded the expansion **of** the landline network and made the USA the best nation in the world as far as connectivity and introduced the concept of Universal Service, in which all residents in our nation would be given the opportunity to have an affordable phone with current technologies. With urban sprawl, low interest rates to finance constructing homes, new digital, packet and fiber technologies and customers requiring broadband capable local phone lines – ILECs like Bixby Telephone continue to add and improve the landline network. The need for USF dollars continues.

In efforts to decrease access charges to IXC's, ILEC's access rates have been decreased with regulatory mandates and, in substitute for access rates based upon costs, ILECs receive increasing amounts of USF funds to complete our revenue requirement. Since the passage of the Telecommunications Act of **1996** (Act), we have seen new LSS (local switching support) and ICLS (interstate common **line** support). These are in addition to the traditional high cost USF program and the long-term support (LTS) USF program. The USF fund has grown partly due to regulators favoring the use of USF to fund the costs to provide services in rural high cost areas rather than access charges. The addition **of** the e-rate program and Lifeline programs were other forces driving the increase **of** the USF fund.

We believe the Act requires ALL telecommunications providers to equitably contribute on a nondiscriminatory basis to the Federal Universal Service Fund (USF). Revenue appears the most logical and fair basis for allocating contributors' shares of the USF burden and we believe the current methodology should be continued.

Most telecommunications technologies, including wireless and internet, rely upon the USF supported landline network for local loop delivery of the service.

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We are concerned with rumors of moving to a per connection based USF assessment. This method will obviously harm wireless carriers and ILECs and be to the financial benefit of IXC's and others operating businesses that don't require a permanent connection to the home or business.

The FCC has favored internet and wireless connections for years and the public is paying increased local service rates to subsidize users **of** internet and wireless services. Internet and wireless services are exempt from access charges and the providers have succeeded in convincing regulators that these technologies must not pay their fair cost to use the network. Internet subscribership is around **60%** of homes and wireless penetration may be slightly higher. It is unfair for internet and wireless providers ***to*** escape funding USF. Both technologies rely heavily on local wireline telephone networks to transport and complete their calls. Wireless signals travel only a few miles **by** air and then are transported over wireline facilities. Wireline providers should not bear **an** unfair burden in contributing to USF – **all** technologies use the network that USF maintains and expands.

CLECs favor serving fewer very profitable customers over a large quantity of marginally profitable customers. Thus, connections based contributions favor CLECs unfairly over incumbent carriers of last resort. ILEC carriers of last resort are required by regulators to serve all customers in the service area, regardless of profitability and regardless of a customers credit class or propensity to buy ancillary services – just because a company has more connections doesn't mean that company has more profits and ability to **fund** the USF fund. This method is discriminatory and not equitable and fair.

ILECs typically have many access **lines** with permanent connections. Wireless and dial-up internet attachments to the network can be said to disappear when the service is not in use. The proposed connections based contribution methods favor technologies that temporarily use and can disconnect from the permanent connections that ILECs have constructed to homes and businesses. Long distance carriers can claim they have few or no permanent connections – IXC's appear to be taking the position which would reduce their contributions to USF. ILECs have permanent connections anu could be one of the few telecom providers continuing to fund USF. The Telecom Act requires nondiscriminatory contributions.

Proposals to assess USF contributions on providers of switched connections is **just** as discriminatory. The FCC doesn't have a corresponding and mirrored proposal to place a larger burden of USF contributions on packet switched or direct circuit providers – the FCC must maintain nondiscriminatory contribution mechanism.

Minimum contribution plus flat rate per user depending on nature and capacity of connection is discriminatory to small and new growing telecom providers. **Minimum** contributions discriminate upon small carriers. Proposals for a minimum USF contribution seem harmless, but a *minimum* or 'small' contribution **as** perceived by a large carrier can be unaffordable to a small carrier like mine. We prefer applying the

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same contribution percentage formula to all carriers, rather than prescribing "deminimis" minimum contributions.

Contribution based upon capacity is not equitable or fair. A basic phone line is 64kb capacity, whether used for residential or business use. *An* ILEC serving the home phone may receive $15 for the monthly service compared to a CLEC serving the business line that receive $38 for the monthly service. Given similar capacities, it is unfair for the CLEC to pay a similar USF contribution because the CLEC serves a more valuable access line – despite the fact they have similar capacity. CLEC's have shown propensity to serve business users and discriminate against residential. Cable TV may claim coax cable capacity is not measurable or varies. Similarly, an ILEC may offer a T-1 to a small business connecting to the internet compared to a CLEC providing a T-1 to a larger business by channel banking a T-1 to serve 24 lines to a PBX that in turn serves 40 phones. The LEC can charge $300 for the T-1 and the CLEC can charge $900 for the same capacity. The CLEC can discriminate and refuse to serve the small business, as not being profitable enough. Similar contributions for similar capacities isn't fair, the channel banked T-1 generating more revenue should pay a higher USF contribution. Cable TV brags about the huge capacity of coax cable – will they be forced to pay a larger burden of the USF fund or will they find a trick in measuring their capacity and claim only 64k for the phone lines they provide over coax cable? If capacity pricing does succeed, as discriminatory as it is, the pricing should be made fair – since a DS1/T-1 equals twenty four DS0's/64k lines, then the contribution factor for a DS1 should be 24 times greater than a DSO.

The safe harbors used by wireless carriers are a shortcut to measuring actual traffic. In administering the USF fund, safe harbors are an unacceptable solution that gives unfair benefit to wireless carriers and lowers their contribution to the USF fund. Safe harbor also changes the rules and creates a muddying of the waters in which carriers can claim it is too much trouble to measure if a call crossed state boundaries – so now other carriers will be permitted to bypass the rules that kept USF strong and substitute an inferior method of considering interstate minutes and interstate revenue that will now be relied upon as a standard. As an ILEC, we have been required for years to measure our traffic and perform traffic studies to provide essential data concerning details of interstate minutes of use and revenue. Wireless carriers could have been required to do the same, not only for a sound USF program, but also to use in compensating connecting access providers through reciprocal compensation or other interconnection agreements. Instead, USF reporting procedures through USAC's Form 499 process allow wireless carriers to use a safe harbor of 10% of revenue as interstate. With all of the nationwide pagers, national roaming plans, and multi-state wireless companies, 10% safe harbor is not a realistic portrayal of interstate usage.

The new interim measure of basing USF contributions on projected and collected end-user interstate revenue is a step back from auditable historical actual revenues. The first problem with this method is accuracy of projections. Few if any predicted the IXC bankruptcies. A motto among finance professionals is keep the cash today, pay the taxes and assessments tomorrow – in other words, estimate revenue at lower than expected (or

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worst case) levels then true-up later. The opportunity to **misuse** the system appears great. If many **USF** contributors estimate declining and low revenues, then **USAC** will believe it must increase the assessment factor. The assessment factor will most likely be higher under the projected revenue system than the historical revenue system – partly because those trying to ***minimize*** their costs can forecast decreases in revenue that may or may not occur and will allow a year or more for ultimate settlement.

Changing the assessment system leads to less predictability of **USF** assessments. We are affiliated with a paging service. It is true that certain businesses, like paging, are being replaced with wireless phones. Long distance ran into price competition and is also being replaced by internet communications (free email versus the cost of a long distance fax call). In these declining revenue industries, **USF** contributions are a problem as we contribute more based on last year's larger revenues, during a year in which our revenues are declining. Even though there is a mismatch between the year **USF** contributions are paid and the year the company earned the revenue **(USF** is paid the following year/quarter, based on previous year/quarter's historical revenue) the problem doesn't warrant changing everyone's contribution method to a less accurate system.

As providers create bundled services and portray the difficulty in determining what portion of revenue is for which jurisdiction, the **FCC** should not throw out the historical **USF** contribution system because those providers say they can no longer perform jurisdictional separations of the products. This is the time for regulators to assure a level playing field and be the watchdog so cable television companies don't cross subsidize broadband and local phone service in order to sell these services below cost and perpetuate their monopoly status. The **FCC** must ensure that in a bundle, regulated products are priced fairly and not overpriced in order to unfairly cross subsidize an emerging competitive market. The **FCC** must not allow smoke and mirrors in the regulatory decision making – providers of services must jurisdictionalize their services and receive rate regulation to ensure competitive neutrality. If the **FCC** were to permit providers to say they have a bundle that can't be broken into elements so it cant be regulated, then the **FCC** is encouraging poor regulatory control and giving a green light to creative accounting or accounting for costs and revenues in less than honest and forthcoming practices. **A** contributor with a bundle could say the local phone line and long distance are free – the customer is only paying for the internet portion of the bundle – thereby avoiding any reportable revenue for **USF** purposes. Instead, the **FCC** must lead the industry and require fair allocations of cost and revenue, requiring prices to recover a regulated cost before allowing a regulated discount to offset a nonregulated discount. Any service connecting two phone numbers can be accounted for on an interstate/intrastate and regulated/nonregulated basis if the provider will capture the call detail.

At a time of uncertain future for **USF,** the **FCC** should not loosen requirements or let go of the reigns. Instead, the **FCC** must require all contributors and receivers of **USF** to perform traffic and cost studies to properly account for revenues and costs. Safe harbors and other practices that artificially lower a carriers contribution to **USF** should be ended – for the sake of sustaining the objective **USF** was created, i.e.... competitors were willing to serve only profitable areas and the USF system is needed to create an environment so telecom services are available in high cost rural areas. It was h e r s , cooperatives and other entrepreneurs who built the other half of this nation's telecom network in the remote, less populated, less profitable areas of the country. Without USF, the nation's telecom network would cover perhaps only half the country and many phone calls to those located in high cost areas would never be possible.

Bixby Telephone Co. is **a** small and rural ILEC and a recipient of high cost USF support. Increasing my company's USF funding burden will further exasperate an already bad situation. Small rural ILECs as recipients of high cost USF support already can't charge rates sufficient to recover our network costs – placing more cost upon **us** is contrary to the Telecom Act's requirements for fair equitable contributions and requirements to maintain Universal Service. It is important to note, the USF received by Bixby Telephone, and similarly situated carriers of last resort, is not a subsidy to the company, but is recovery of our high cost to provide essential service. While other companies receiving USF, not based upon their costs, probably are receiving a windfall and are encouraged to enter markets where real world economics would not dictate entry, but the new entrant is entering the market just to receive an incumbent's USF support.

We are amazed and deeply concerned by the size and growth of the USF. We have noticed how new USF programs (e-rate and Lifeline) have increased the size **of** the USF fund. We also have seen how new regulatory policies (to reduce ILEC access rates and increase reliance on USF funds) in the name of implicit support have increased the size of the USF fund. We also have seen how other new policies (portability of USF based upon the incumbent's costs of service) are threatening to increase the size of the USF fund. Most concerning, is how certain telecommunications providers are muddying the water, distorting the picture, and adding political spin that attempt to undermine the 80 years of success of the USF and the nondiscriminatory contribution provisions of the USF policy.

Those proposing to change the current USF contribution method hope to convince the FCC that they are the only ones in a slow economy facing financial hardship and that it is a hardship if not impossible to determine telecom traffic's jurisdiction. We recommend NO telecommunications connection be exempted based upon the nature, bandwidth or capacity of the connection. The current USF contribution method based upon historical revenues is fair and auditable.

Sincerely,

Ed Gustafson

Ed Gustafson, Controller